

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

2009 SEP 18 PM 12:45

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS, FLORIDA

MARIO SANCHEZ, *pro se*

Plaintiff,

v.

ENVIRONMENTAL PROTECTION AGENCY
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Defendant.

Civil Action No.

2: 09 - CV - 624 - FTM-99DNF

UNASSIGNED

**DOUGLAS N. FRAZIER
U.S. MAGISTRATE JUDGE**

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
UNDER THE FREEDOM OF INFORMATION ACT**

1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C. §552. Plaintiff *pro se* Mario Sanchez seeks disclosure of all documents, emails (with attachments), photographs, reports, and any and all documentation from the Environmental Protection Agency (EPA) as related in any way to Marco Island, Florida from the periods of January 1, 2005 thru July 31, 2008.
2. Defendant EPA has refused to release the requested records.
3. EPA's present refusal to release the requested information is a violation of the Freedom of Information Act.

BASIS AND BACKGROUND

4. The Plaintiff is a full time resident of Marco Island, Florida.
5. From approximately January 2005 until approximately December 2007, the City of Marco Island, Florida undertook several construction projects.
6. During these construction projects, the following has been documented to have occurred:

- a. Water pipes comprised of asbestos were crushed on public land.
 - b. Piles of the crushed asbestos cement pipes lay adjacent to a highly-trafficked avenue where hotel patrons were required to wade through the crushed asbestos cement pipes in order to enter their hotels.
 - c. Asbestos shards resulting from the crushed asbestos cement pipes were buried on public land.
 - d. The asbestos shards that were buried on public land were purportedly excavated and purportedly dumped at a waste management facility.
 - e. At least one of the purported excavations of the asbestos shards was conducted by hand using workers in plain clothes, with no protection against hazards whatsoever, placing what they found in plastic shopping bags.
 - f. A fine dust comprised of asbestos resulting from crushing the asbestos cement pipes was dispersed into the air and blanketed entire neighborhoods.
 - g. Effluent containing hydrogen sulfide was pumped untreated into the waterways, and onto streets, swales and sidewalks.
 - h. Effluent containing with sulfuric acid was pumped untreated into the waterways, and onto streets, swales and sidewalks.
 - i. Effluent containing sediment was pumped untreated into the waterways, and onto streets, swales and sidewalks.
 - j. Hydrogen sulfide gas was continuously released into the air where it enveloped entire neighborhoods resulting in approximately 900 documented cases of residents seeking medical attention.
7. Asbestos, hydrogen sulfide and sulfuric acid are known to be highly dangerous toxins that have proven to be deleterious to human health and to the environment.
8. The need to provide the public with the information contained in the requested records is especially important given the highly toxic nature of the contaminants and pollutants introduced into the environment by the City of Marco Island, Florida.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to the Freedom of Information Act, 5 U.S.C. §552(a)(4)(B), the Administrative Procedure Act, 5 U.S.C. sec 701 et seq., and 28 U.S.C. §1331 and 1361.

10. Venue lies in this district under 5 U.S.C. §552(a)(4)(B).

11. Inasmuch as the EPA did not meet its legal duty to respond to the Plaintiff's FOIA request within the required time, the Plaintiff is relieved of any obligation to exhaust administrative remedies and is now entitled to appeal directly to the Court to enforce the dictates of FOIA pursuant to 5 U.S.C. §552(a)(6)(C).

PARTIES

12. Plaintiff Mario Sanchez is an investigative journalist and resident of Marco Island, Florida.

13. Defendant Environmental Protection Agency is an agency of the United States government which has possession of the information requested by the Plaintiff under the Freedom of Information Act.

14. The Plaintiff submits that, in light of the residents and guests of Marco Island's risk of living in an area where known toxins were used, introduced, dispersed and buried, the public is entitled to;

- a. be informed of any and all exposure to such toxins,
- b. be informed so as to determine the present, near-term and long-term health effects of exposure to such toxins,
- c. be informed as to the present, near-term and long-term adverse effects to the local environment due to the introduction of such toxins,
- d. be informed as to any and all remedies, if any, that were undertaken to remove or otherwise remediate the toxins,
- e. be informed as to which individuals, agencies and companies were responsible for such contamination, and the extent to which they were prosecuted, if any.

STATEMENT OF THE CASE

15. By letter dated July 31, 2008, Plaintiff Sanchez, pursuant to the Freedom of Information Act, requested all documents, emails (with attachments), photographs, reports, and any and all documentation from the EPA related in any way to Marco Island, Florida from the period January 1, 2005 thru July 31, 2008.

16. By letter dated January 28, 2009 – five (5) months after the original request – the EPA produced some copies of newspaper clippings, several all black or nearly all black pages, and several redacted documents that appear to me emails authored by local homeowners.

17. By the same letter of January 28, 2009, the EPA did not release or disclose any document or information internal to the EPA or any other federal agency.

18. By the same letter of January 28, 2009, the EPA justified its refusal to release any internal EPA document or information, refused to release any relevant non internal EPA document or information, and justified the redacted emails and the black pages, claiming exemption under 5 U.S.C. §552(b)(2), (7)(C) and (7)(D).

19. By letter dated February 27, 2009, Plaintiff administratively appealed the EPA's refusal to produce the requested information.

20. By eight (8) letters dated from May 5, 2008 thru August 30, 2009, Plaintiff requested EPA director Lisa Jackson to provide the requested information and to expedite the appeal.

21. To date, as of September 18, 2009, EPA administrator Lisa Jackson has ignored all eight (8) letters.

22. By letter dated September 10, 2009 – thirteen (13) months since the plaintiff's original FOIA request, the EPA denied the appeal by again refusing to release any internal EPA document or information, any relevant non internal EPA document or information, claiming as an exemption that, though no law enforcement has or will take place, those subject to the EPA's investigation "*may be embarrassed*" by the release of such information.

23. To date, as of September 18, 2009 – thirteen (13) months since the plaintiff's original FOIA request, the EPA has not complied with the FOIA.

CAUSES OF ACTION

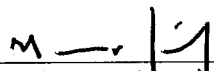
24. Plaintiff incorporates each allegation of paragraphs 1- 23 as if fully set forth herein.
25. Defendant EPA's failure to release the requested information violates the Freedom of Information Act, 5 U.S.C. §552.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court:

- A. Declare that the defendant's refusal to produce the requested information is unlawful;
- B. Declare that the public's right to know the health risks and environmental destruction resulting from the purposeful release and introduction of highly toxic contaminants into Marco Island, Florida via the air and into the waterways far surpasses the potential for "*embarrassing*" those responsible. Furthermore, that the release of the requested information cannot impact "*law enforcement purposes*" since there has not been, nor is there, any law enforcement as related to the purposeful release and introduction of highly toxic contaminants into Marco Island, Florida via the air and into the waterways;
- C. Order defendant to release to Plaintiff all documents, emails (with attachments), photographs, reports, and any and all documentation as related to in any way to Marco Island, Florida from the periods January 1, 2005 thru July 31, 2008;
- D. Award Plaintiff his costs in this action; and
- E. Grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,



Mario Sanchez
Plaintiff *pro se*

Dated: September 18, 2009